

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

**Hearing Date: January 30, 2020 at 9:30 a.m.**

**FEE EXAMINER’S INFORMATIVE MOTION REGARDING INCONSISTENT FILING  
AND DEFICIENT NOTICE OF DUFF & PHELPS, LLC’S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

The Fee Examiner, Brady C. Williamson (“**Fee Examiner**”), appointed in the above-captioned cases, by his counsel, Godfrey & Kahn, S.C. (“**Godfrey & Kahn**”), submits this *Informative Motion Regarding Inconsistent Filing and Deficient Notice of Duff & Phelps, LLC’s Motion for Partial Summary Judgment* (the “**Informative Motion**”). It addresses the improperly-filed *Motion and Memorandum of Law in Support of Duff & Phelps, LLC Motion for Summary Judgment Under Fed. R. Bankr. P. 7056* [Dkt. No. 9188], *Statement of Material Facts in Support of Motion for Partial Summary Judgment Under Fed. R. Bank. P. 7056(a)* [Dkt. No. 9186] (together, the “**Motion for Partial Summary Judgment**”) and *Notice of Hearing on*

<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the: (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and, (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747 ) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

*Motion and Memorandum of Law in Support of Duff & Phelps, LLC Motion for Summary Judgment Under Fed. R. Bankr. 7056(a) [Dkt. No. 9191] (the “Deficient Notice”).*

### **PRELIMINARY STATEMENT**

This informative motion, pursuant to the Tenth Amended Case Management Procedures, notifies the Court and the parties that the Deficient Notice and Motion for Partial Summary Judgment are “**Inconsistent Filings**” and that the hearing on the Motion for Partial Summary Judgment, if any, “shall be scheduled without the necessity of Court order for the first Omnibus Hearing date after the applicable notice period has expired . . . .” *Order Further Amending Case Management Procedures* [Dkt. No. 8027], Ex. A (“**Case Management Procedures**”) at p. 10 § III(E). That date is January 30, 2020.

### **BACKGROUND**

On October 15, 2019, the Fee Examiner filed the *Fee Examiner’s Limited Objection to the Amended First Interim Application of Duff & Phelps LLC for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred as Independent Forensic Analysis Team to the Financial Oversight and Management Board for Puerto Rico, as Representative of the Debtor, the Commonwealth of Puerto Rico, for the Period of November 1, 2018 Through January 31, 2019* [Dkt. No. 8862] (the “**Fee Objection**”). Consistent with the *Second Amended Order Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Dkt. No. 3269], the Fee Examiner noticed the objection for hearing on October 30, 2019.

On October 22, Duff & Phelps (“D&P”) filed the *Reply of Duff & Phelps LLC to Fee Examiner’s Limited Objection (Doc. No. 8862) to Amended First Interim Application for Allowance of Compensation and Reimbursement of Expenses for Period November 1, 2018 Through January 31, 2019* [Dkt. No. 8915] (the “**Duff & Phelps Response**”). On October 24,

2019, the Court entered the *Order Setting Deadline for Joint Status Report by Fee Examiner and Duff & Phelps* [Dkt. No. 8945] (the "**First Scheduling Order**") requiring the parties to file a joint status report by Tuesday October 29, 2019.

During the same timeframe, D&P informed the Fee Examiner that it wished to adjourn the hearing on the Fee Objection to December 11, 2019 or a later date to continue discussions toward a possible consensual resolution. As such, the *Fee Examiner's Report on Uncontested Professional Fee Matters for Consideration in Connection with the October 30, 2019 Omnibus Hearing* [Dkt. No. 8934] requested adjournment of the Fee Objection to the December 11, 2019 Omnibus Hearing. *Id.* at 8.

On October 25, 2019, the Court entered the *Order Adjourning Hearing and Setting Amended Deadline for Joint Status Report by Fee Examiner and Duff & Phelps* [Dkt. No. 9008] (the "**Second Scheduling Order**"), re-setting the deadline for the joint status report to December 2, 2019 and adjourning the hearing on the Fee Objection to the December 11, 2019 Omnibus Hearing "without prejudice to further adjournment."

Consistent with the Second Scheduling Order, the parties met and conferred, developing and filing on November 14, 2019 the *Joint Status Report by Fee Examiner and Duff & Phelps LLC* [Dkt. No. 9160] (the "**Joint Status Report**") outlining a proposed schedule for resolution of the Fee Objection. The same day, the Court entered the *Order Regarding Joint Status Report by Fee Examiner and Duff & Phelps LLC in Response to Order Dated October 25, 2019* [Dkt. No. 9170] (the "**Third Scheduling Order**") adopting the parties' proposed schedule, adjourning the hearing on the Fee Objection to the January 30, 2020 Omnibus Hearing, and setting

January 8, 2020 as the deadline for the submission of pre-trial submissions and simultaneous pre-trial briefs.<sup>2</sup>

The next day, D&P inexplicably filed the Motion for Partial Summary Judgment. It was not disclosed in advance to the Fee Examiner or his counsel nor was it contemplated in the Joint Status Report or Third Scheduling Order. In the Deficient Notice, D&P unilaterally noticed the Motion for Partial Summary Judgment for hearing at the December 11, 2019 Omnibus Hearing and stated an objection deadline of November 26, 2019 at 4:00 p.m.

### **PROCEDURAL VIOLATION AND NOTICE**

The Motion for Partial Summary Judgment and Deficient Notice violate Fed. R. Bankr. P. 7056<sup>3</sup> (requiring at least 30-day notice of summary judgment hearing), the Case Management Procedures § I(H) (requiring requests for expedited relief to be made by Urgent Motion and requiring good-faith communications to resolve or narrow issues), and the explicit directive of Third Scheduling Order (which did not contemplate summary judgment motion practice).

Therefore, in accordance with section III(E) of the Case Management Procedures, the Fee Examiner hereby notifies the Court and parties that the Motion for Partial Summary Judgment and Deficient Notice are “**Inconsistent Filings**” and “shall be scheduled without the necessity of Court order for the first Omnibus Hearing date after the applicable notice period has expired . . . .” Because Fed. R. Bankr. P. 7056 requires “at least 30 days” before the initial date set for an evidentiary hearing on a motion for summary judgment, the operative hearing date is **January 30, 2020**. Conveniently, that is the same date on which the Court already has planned to hear the Fee Objection pursuant to the Third Scheduling Order.

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<sup>2</sup> As noted in the Fee Objection, the Fee Examiner continues to reserve the right to amend the Fee Objection to raise issues previously resolved by compromise. *See* Dkt. No. 8862 at p. 3, n.4.

<sup>3</sup> Fed. R. Bankr. P. 7056 applies in contested matters. Fed. R. Bankr. P. 9014(c).

Also consistent with the Case Management Procedures § III(I), the deadline for the Fee Examiner's objection to the Motion for Partial Summary Judgment, if any, is 4:00 p.m. on the date that is fifteen (15) calendar days before the hearing, that is, **January 15, 2020 at 4:00 p.m. (AST)** or any date otherwise ordered by the Court.

Dated: November 25, 2019.

**WE HEREBY CERTIFY** that on this date, we electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system that will send notification of such filing to all attorneys of record registered in the use of the CM/ECF system.

EDGE LEGAL STRATEGIES, PSC

*s/Vilmarys M. Quiñones Cintrón*

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